

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2010 NOV 18 PM 4:03 ✓

FILED WITH CLERK

BY: Ivy Rios

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9
10 **IN THE SUPERIOR COURT**

11 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

12 STATE OF ARIZONA,

V1300CR201080049

13 Plaintiff,

**STATE'S REPLY TO DEFENDANT'S
RESPONSE TO STATE'S MOTION IN
LIMINE RE: PRETRIAL ISSUES**

14 vs.

15 JAMES ARTHUR RAY,

(Oral Argument Requested)

16 Defendant.

Division PTB

17 Comes now the State of Arizona, through undersigned counsel, and files this Reply to
18 Defendant's Response to the State's Motion in Limine Re: Pretrial Issues.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **(A) Defendant should be precluded from making any improper comments or**
21 **characterizations relating to the pre-indictment meeting between the prosecution, law**
22 **enforcement and the medical examiners.**

23 The State has no objection to Defendant making full inquiry of the medical examiners as
24 to the basis of their findings and conclusions. To the extent that the medical examiners relied on
25 any information provided during the pre-indictment meeting of December 14, 2009, the State
26 agrees Defendant is entitled examine the medical examiners regarding this information. The

1 purpose of the State's motion was not to limit Defendant's ability to effectively cross-examine
2 any expert witness as to the basis of his opinion. What the State requests is that Defendant be
3 precluded from making any improper comments or characterizations relating to the meeting
4 itself, or any references to the subject matter or arguments made in the Motion to Compel,
5 Response and Reply.
6

7 In a footnote in his Response, Defendant assures this Court that he "has no intention of
8 making any *improper* comments or characterizations relating to the meeting." (emphasis in
9 original). Yet in the body of his response, he proceeds to do just that. For example, Defendant
10 tells this Court that "the medical examiners themselves" have characterized the meeting as an
11 "unprecedented invasion into their independence." Defendant further tells this Court that Dr.
12 Fischione stated that "never in his 18 years in the profession had the prosecution so encroached
13 on medical examiner's domain." Both statements misstate Dr. Fischione's comments to
14 Defendant. What Dr. Fischione told Defendant was that "this is probably in 18 years on any
15 criminal civil [sic] that I've been involved in, the first time that a prosecutor has ever told me
16 that not to answer any questions." Nowhere in any of the medical examiners' interviews have
17 any of them stated the meeting was an "unprecedented invasion into their independence" or that
18 the meeting in anyway "encroached on the medical examiner's domain." Such
19 misrepresentations are not only misleading to this Court, they are exactly the type of
20 mischaracterizations the State is seeking to preclude.
21
22

23 The State continues to believe it acted in good faith in refusing to disclose information
24 relating to the pre-indictment meeting of December 14, 2009 on the basis of work product.
25 From the very beginning, months before Defendant was indicted, the State had notified the
26

1 participants that it considered the meeting and the PowerPoint to be work product and asked the
2 participants to respect that privilege. This Court has ruled that the information relating to the
3 meeting is disclosable and the State has fully complied with this Court's order. The State
4 arranged for Defendant to re-interview the law enforcement personnel that were present at the
5 meeting and is in the process of scheduling re-interviews of the medical examiners. As noted
6 above, the State's request is not aimed at limiting the Defendant's ability to examine the
7 medical examiners regarding the basis for their findings and conclusions; however, Defendant's
8 continued accusations and mischaracterizations of the nature of the meeting are inappropriate
9 and should not be allowed before the jury.

11 **(B) All parties should be precluded from examining witnesses regarding private or**
12 **sensitive personal information revealed to Defendant during the 2009 Spiritual Warrior**
13 **Seminar or mentioned in the departmental report and supplements.**

15 Defendant has indicated that he does not "plan at this time to introduce evidence
16 regarding participants' post traumas or other private information." However, Defendant states
17 that as a part of his defense, he may actually seek to elicit this information from witnesses to
18 prove Defendant has helped individuals "overcome debilitating problems." The State has never
19 claimed, and will not claim at trial, that there aren't participants who think Defendant has
20 helped them; nor has the State, as Defendant represents to this Court, "demeaned Defendant or
21 misrepresented the nature of his work."

23 The State does not believe the Defendant needs to question witnesses as to specific
24 instances of abuse or trauma in their past in order to present evidence that he has helped
25 someone to "overcome debilitating problems." Contrary to Defendant's argument, such
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1 testimony, such as relating an episode of rape or of sexual abuse as a child, will only serve to
2 confuse and mislead the jury and embarrass the witness and should not be allowed.

3 RESPECTFULLY submitted this 18th day of November, 2010.
4

5
6 By Sheila S Polk
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9 **COPIES** of the foregoing emailed this
10 18th day of November, 2010:

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COPIES of the foregoing delivered this
18th day of November, 2010, to

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